



Patterns of Prejudice

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United States: Update on Jews as a race

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In addition, we have considered carefully the exemption which the legislation provides for the Jewish and Muslim communities from the requirement to stun animals before slaughter. The arguments for and against this exemption are those of religious belief and of animal welfare, both issues of great importance to those who have expressed views to us.

... The religious communities have made clear that elements of their slaughter requirements are fundamental obligations, forming part of their religious law which it is not open to them to alter. They have also rejected the Council's assessment of the welfare implications of religious slaughter.

I can well understand why the Council should recommend that the interest of the animal would best be safeguarded by ensuring efficient stunning prior to slaughter, including slaughter by decapitation. However, the Government has to recognize the serious implications for the religious communities if they were no longer allowed to prepare meat as their faiths require. We do not believe that we would be justified in imposing such a burden on these communities. We do not therefore propose to ask Parliament to reverse the attitude which it has taken to this issue in the past.

Notes

- 1 *Report on the Welfare of Livestock when Slaughtered by Religious Methods* (HMSO 1985; Reference Book 262).
- 2 'FAWC report on religious slaughter: government response', Ministry of Agriculture, Fisheries and Food Press Release, 29 October 1987. This contains Mr MacGregor's written reply to a parliamentary question.

UNITED STATES

Update on Jews as a race

Careful advocacy can pay off. That is the lesson of a recent decision of the United States Supreme Court arising from the vandalism of a synagogue¹ extending the reach of a statute (42 USC § 1982) providing that 'all citizens . . . shall have the same right as is enjoyed by white citizens to . . . hold . . . real . . . property, from racial to ethnic discrimination.' The Court held that Jews were such a group, notwithstanding the lower court's contrary conclusion. In a companion case² involving employment discrimination against an Iraqi Arab, the Court extended the reach of a parallel statute (42 USC § 1981) guaranteeing to all the same right to contract as is enjoyed by white citizens.

There were two difficulties with reaching this result; first the statute seems to be cast in racial terms, and, under current scientific definitions of race, neither Jews nor Arabs are a race. Second, as a matter of policy, there were sound reasons for not labelling either Jews or Arabs a race.

The lower courts had struggled with these dilemmas, reaching varied results, including a definition of race founded in part on physical characteristics. The Supreme Court had no such difficulties because of the superb advocacy of lawyers for the National Association for the Advancement of Coloured People Legal Defense Fund, which represented plaintiffs in the *Al-Khazraji* suit. They carefully documented that in the nineteenth-century, as reflected in dictionaries, encyclopedias, and, most important in

the legislative history, the word race had a far broader meaning than it does today.

It was with that meaning in mind that Congress passed the statutes at issue, and it was that meaning which controlled these cases. As the Court put it:

Based on the history of § 1981, we have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination is racial discrimination that Congress intended . . . to forbid, whether or not it would be classified as racial in terms of modern scientific theory.

MARC D. STERN

Notes

- 1 *Shaare Tfillah Cong. v. Cobb*, 107 S.Ct. 2019 (1987).
- 2 *St. Francis College v. Al-Khazraji*, 107 S.Ct. 202 (1987). These cases, and the difficulties they raised, are described in greater detail in Stern, 'Jews as a race: US courts on protection of property from antisemitic vandalism', *PATTERNS OF PREJUDICE*, vol. 20, no. 2, April 1986.

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